RSA 174/2004
BEFORE
THE HON'BLE MR JUSTICE T.N.K. SINGH
JUDGMENT AND ORDER

1. The present appellant is the defendant in the Title Suit No.198 of 2000 filed by the respondents-plaintiffs for ejectment of the appellant-defendant, his man and agents from the suit house, which is admittedly belonged to the respondents-plaintiffs in the Court of Civil Judge (Junior Division) No.1, Kamrup, Guwahati. The learned trial Court by passing the judgment and decree dated 30.1.2003 had decreed the Title Suit No.198 of 2000 in favour of the respondents-plaintiffs for ejectment of the appellant-defendant from the suit house (suit premises) and also for recovery of arrear rent of Rs.7920.00 along with interest of 15% P.A. from the date of filing of the suit till recovery.

2. Against the judgment and decree of the trial Court i.e. Civil Judge (Junior Division) No.1, Kamrup, Guwahati dated 30.1.2003 passed in Title Suit No.198/2000, the appellant-defendant preferred an appeal being Title Appeal No.16 of 2003 in the Court of Civil Judge (Senior Division) No.2, Kamrup, Guwahati who dismissed the appeal i.e. Title Appeal No.16 of 2003 by passing the judgment and decree dated 30.6.2004 and thereby upholding the judgment and decree of the trial Court i.e. Civil Judge (Junior Division) No.1, Kamrup dated 30.1.2003. Hence the present second appeal which has been admitted for hearing on the following substantial question of law:-

1) Whether, in view of Section 106 of the Transfer of Property Act, that notice to quit must expire with the end of a month of the tenancy, which depends on the date of commencement of tenancy and no such date of commencement having been specified in quit notice vide Ext.8, the learned lower appellate court was justified in holding that Ext.8 was a proper notice under Section 106 of the Transfer of Property Act.

2) Whether, in view of Section 106 of the Transfer of Property Act that a monthly tenancy is terminable by a fifteen day's notice expiring with the end of a month of the tenancy and the instant notice vide Ext.8 merely giving fifteen day's time to vacate without terminating the tenancy expiring with the end of the month of the tenancy, the learned lower appellate court was legally justified in holding that the notice of termination of tenancy was a proper and valid notice.

3. Heard Mr. B.C. Das, learned senior counsel appearing for the appellant-defendant as well as Mr. P.S. Deka, learned counsel appearing for the respondents-plaintiffs.

4. The facts in short compass are that the plaintiff No.1 is a Hindu temple situated at Hajo within the district of Kamrup and plaintiff No.2 is the Doloi of the temple and he is managing the affairs of the temple. Admittedly the plaintiff No.1 is the owner of various properties including the landed property and building/houses including the suit house (the suit premises) described in the schedule to the plaint. In the year 1984, the then Managing Committee made an agreement with the appellant-defendant for letting out the Assam type house i.e. the suit house on the monthly rent basis to the appellant-defendant for opening a tea stall for the convenience of the pilgrims of the temple. As the appellant-defendant failed to pay the rent for several months the erstwhile Managing Committee issued notice on 28.11.1985, 12.5.1986, 12.12.1987. 30.7.1989, 4.11.1990 and 8.8.1998 to the appellant-defendant demanding arrear of rent and handing over the suit house (suit premises). It is also stated that on several occasions the appellant-defendant took time to pay the rent. But he failed to pay the rent although time was granted.

5. Though the suit house was let out to the appellant-defendant only for the purpose of tea stall, the appellant-defendant started to live there with his family members by violating the terms and conditions of the agreement. Due to increasing number of devotees the temple needs more accommodation for welfare of the devotees/pilgrims and as such the Managing Committee decided to open rest house (Jira-ni-sara) cum laboratory cum Library cum office for the welfare and benefit of the pilgrims/devotees. For that purpose, the plaintiffs require the suit house and also that such requirement is a bonafide requirement. Ultimately on 13-9-2000 a Registered notice through Advocate was served upon the defendant by terminating the monthly lease to vacate the suit house. Admittedly, the appellant-defendant had received the said notice dated 13.9.2000 but did not vacate the suit house. Hence the Title Suit No.198 of 2000 against the appellant-defendant for ejecting/evicting from the suit premises in the court of Civil Judge (Junior Division) No.1, Kamrup, Guwahati.

6. The appellant-defendant also contested the Title Suit No.198 of 2000 by filing written statement. In the written statement filed by the appellant-defendant, he admitted that the suit house/suit premises belonged to the plaintiff No. 1. In the written statement the appellant-defendant stated that no valid and the proper notice under Section 106 of the Transfer of Property Act (for short T.P. Act) was served properly. For ready reference, para No.13 of the written statement of the appellant-defendant wherein the appellant-defendant had mentioned that no valid and proper notice under Section 106 of the T.P. Act was served is quoted hereunder:-

13. That with regard to the statements made in para 12 and 13 of the plaint, the answering defendant begs to state that no valid and proper notice under Section 106 of T.P. Act was served properly. And it is further submitted that alleged notice by District Judge confused the authority of ownership/land lordship as such the suit is not maintainable. The defendant further begs to state that it is true and he has represented the District Judge for the livelihood and it is not by manipulation but it is the desire of well wishers for a well wishes for a genuine cause.

7. The learned trial Court framed as many as seven (7) issues which are quoted hereunder:-

1) Whether the suit is maintainable in its present form?

2) Whether the suit is barred by limitation?

3) Whether the defendant is a defaulter in paying the rent of the suit premises?

4) Whether the suit house is required bonafide by the plaintiffs?

5) Whether the notice under Section 106 of T.P. Act (Transfer of Property Act) was served upon the defendant?

6) Whether the defendant is liable to be evicted from the suit premises?

7) To what relief/reliefs the plaintiff is entitled to?

8. As stated above, the Title Suit No.198 of 2000 had been decreed by the trial Court vide judgment and decree dated 30.1.2003. The learned Ist appellate Court while dismissing the Title Appeal No.16 of 2003 by passing the judgment and decree dated 30.6.2004 made clear finding that the appellant-defendant through his pleading as well as in his evidence on affidavit stated that no valid notice under Section 106 of the T.P. Act was served properly on him. But a careful consideration of the evidence of PW-1 and the defendant it is found that defendant

failed to deny his signature Ext-10(1) in Ext.10. The defendant also failed to challenge the address mentioned in the notice i.e. the said Registered notice da ted 13.9.2000 through Advocate i.e. Ext-A. Thus, I have no option but to hold th at the notice dated 13.9.2000 was duly served upon the defendant . Further, the Ist appellate Court in his judgment and decree dated 30.6.2004 passed in Title A ppeal No.16 of 2003 held that the said notice dated 13.9.2000 (Ext.A) is also a valid notice under Section 106 of the T.P. Act keeping in view of the decision o f this Court in Raja Ram Soni Vs. Krishna Prasad Singh reported in AIR 1973 GAUH ATI 17.

9. Regarding the substantial question of law i,.e.

1) Whether, in view of Section 106 of the Transfer of Property Act, that no tice to quit must expire with the end of a month of the tenancy, which depends o n the date of commencement of tenancy and no such date of commencement having be en specified in quit notice vide Ext.8, the learned lower appellate court was ju stified in holding that Ext.8 was a proper notice under Section 106 of the Trans fer of Property Act.

formulated in the present second appeal, this Court is of the considered view th at the Ist substantial question of law is not required to be considered after th e enactment of the Act called Transfer of Property (Amendment) Act 2002 inasmuch as under Section 2 of the Transfer of Property (Amendment) Act 2002, section 10 6 of the Transfer of Property Act 1882 (4 of 1882) had been substituted by new S ection 106 which reads as follows:-

106. Duration of certain leases in absence of written contract or local usage- (1) In the absence of a contract or local law or usage to the contrary, a lease o f immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or le ssee, by six months notice and a lease of immovable property for any other purpo se shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days, notice.

(2) Notwithstanding anything contained in any other law for the time being in fo rce, the period mentioned in sub-section (1) shall commence from the date of rec eipt of notice.

(3) A notice under sub-section (1) shall not deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub -section, where a suit or proceeding is filed after the expiry of the period men tioned in that sub-section.

(4) Every notice under sub-section (1) must be in writing signed by or on behalf of the person giving it, and either be sent by post to the party who is intende d to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery i s not practicable) affixed to a conspicuous part of the property).

10. From bare perusal of the amended Section 106 of the T.P. Act 1882 it is clear that for terminating the lease for month to month basis a simple notice by giving 15 days to the lessee will be sufficient. Under the amended Section 106 of the T.P. Act it is not necessary that notice to quit must expire with the end of a month of the tenancy. Under Section 3 of the Transfer of Property (Amendme nt) Act 2002 the provision of the newly amended Section 106 of the T.P. Act 1882 shall apply to (a) all notices in pursuance of which any suit or proceeding is pending at the commencement of this Act (b) All notices which had been issued be fore the commencement of this Act but where no suit or proceeding has been filed before such commencement.

11. Regarding the second substantial question of law, Mr. B.K. Das, learned senior counsel strenuously submitted that in the said notice dated 13.9.2000 the words termination or/terminating the tenancy were not used but the said notice was only a notice asking the appellant-plaintiff to vacate the suit premises within 15 days. Such being the situation, the notice dated 13.9.2000 is not a valid notice under Section 106 of the T.P. Act for terminating the monthly lease of the petitioner in respect of the suit premises/suit house. As discussed above, the appellant-defendant did not take such specific plea in his written statement. Over and above, in the written statement the appellant-defendant did not mention the manner or/particular on which it is alleged that the said notice dated 13.9.2000 is invalid for non-compliance with the requirements provided in Section 106 of the T.P. Act.

12. It would be apposite to quote the said notice dated 13.9.2000 herein for ready reference. The said notice dated 13.9.2000 reads as follows:-

P. SEN DEKA
Advocate
Gauhati High Court.

To
Sri Jadav Chandra (Malakar) Das,
Son of Late Jajya Malakar,
Village - Bamuntola, Hajo,
P.O. & P.S. Hajo,
District - Kamrup, Assam.

Sir,

Under the instructions of my client Sri Golok Chandra Sarma, Doloi of Sri Sri Hayagriv Madhab Temple, Hajo, I give you this notice to vacate the Assam Type House which you have taken on rent within the Temple premises and also pay the arrears of rent of premises and also pay the arrears of rent of Rs.25,785/-.

That since 1984 you have occupied the A.T. House under the agreement with the Managing Committee and agreed to pay monthly rent but you failed to pay the rent regularly and the total arrears of rent became Rs.25, 785/- till today.

That the Managing Committee agreed to let out the A.T. house for opening up only a Tea Stall for the benefits of the devotees, but subsequently you started residing there with your families and also allowed the Complex to be used for anti social activities, such as gambling and drinking etc. This is highly objectionable that too within the premises of a Temple.

That notices have been issued to you to vacate the house and payment of arrears of rent on several times but you have not vacated the house nor rents were paid. You were also asked to vacate the house by the notice of learned District and Session Judge, Kamrup who is overall In-charge of the Temple vide letter No.DJK/MT/4/98/1358E dated 16.12.1998 but you did not comply with the notice but made representation for allowing you to remain in the house.

That the managing committee has decided to use that house for opening up a rest house cum-library-cum-office for the welfare and benefits of the pilgrims/devotes and the house rented to you is required immediately.

You are hereby asked to vacate the house and above pay all outstanding arrears of rent Rs.25785/- within 15 days from the receipt of this notice failing which a suit will be instituted in the Court of Civil Judge, Kamrup, Guwahati for eject ment and for recovery of arrears of rent.

In the event of institution of any suit etc. you will be further liable to pay c ost of the suit and compensation together with the interest.

This is for your information and necessary action.

Sincerely yours
Sd/- Pradip Sen Deka

13. The purpose of giving notice for 15 days in respect of the monthly lease under Section 106 of the T.P. Act is only for ejecting or/evicting the lessee f rom the suit premises (immoveable property) by terminating the monthly lease. Th erefore, giving 15 days' notice to the lessee for vacating the suit premises wou ld mean that the monthly lease is being terminated.

14. The Apex Court in Bhagabandas Agarwalla Vs. Bhagwandas Kanu and Others r eported in (1977) 2 SCC 646 had discussed as to whether or not the notice to qui t wherein the words terminate the monthly lease or/terminating the tenancy wer e not used is a valid notice to quit under Section 106 of the Transfer of Proper ty Act and held that the meaning of the notice quit could be gathered from the w hole words put forward in the notice to quite and also can decide what is the me aning and effect of the notice to quit. The validity of the notice to quit which was considered by the Apex Court in Bhagabandas Agarwalla(Supra) reads as follo ws:-

You are hereby informed by this notice that you will vacate the said house for our possession within the month of October, 1962 otherwise you will be treated a s trespassers from November, 2001 in respect of the said house.

15. The Apex Court held that the effect of the notice would be that the tena ncy had been terminated from November 2001. Para 3 and 4 of SCC are quoted hereu nder:-

3. Now, it is settled law that a notice to quit must be construed not with a des ire to find faults in it, which would render it defective, but it must be constr ued ut res magis valeat quam pereat. The validity of a notice to quit as point ed out by Lord Justice Lindley, L.J. in Sidebotham Vs. Holland, ought not to tu rn on the splitting of a straw . It must not be read in a hyper-critial manner, nor must its interpretation be affected by pedagogic pendatism or over refined s ubtlety, but is must be construed in a common sense way. See Harihar Banerji Vs. Ramsashi Roy . The notice to quit in the present case must be judged for its va lidity in the light of this well recognized principle of interpretation.

4. It is indisputable that under Section 106 of the Transfer of Property Act the notice to quit must expire with the end of the month of the tenancy, or in othe r words, it must terminate the tenancy with effect from the expiration of the mo nth of the tenancy. If it terminates the tenancy with effect from an earlier dat e, it would be clearly invalid. Now, here the notice to quit required the respon dents to vacate the premises within the month of October 1962 and intimated to them that otherwise they would be treated as trespassers from November 1 in r espect of the premises. The question is what is meaning and effect of the words within the month of October, 1962 in the context in which they are used in the notice to quit? Do these words mean that the tenancy of the respondents was sou ght to be terminated at a date earlier than the expiration of the month of Octob er 1962 and they were required to vacate the premises before such expiration? We do not think so. When the notice to quit required the respondents to vacate wi thin the month of October, 1962 , what it meant was that the respondents could v acate at any time within the month of October 1962 but not later than the expira tion of that month. The last moment up to which the respondents could, according to the notice to quit, lawfully continue to remain in possession of the premise

s was the midnight of October 31, 1962. We fail to see any difference between a notice asking a tenant to vacate within the month of October 1962 and a notice requiring a tenant to vacate latest by the midnight of October 31, 1962, becaus e in both cases, the tenant would be entitled to occupy the premises up to the e xpiration of October 31, 1962 but not beyond it. This position would seem to fol low logically and incontestably, as a matter of plain natural construction, from the use of the words within the month of October 1962 without anything more, but here it is placed beyond doubt or controversy by the notice to quit proceedi ng to add that otherwise the respondents would be treated as trespassers from No vember 1, 1962. This makes the intention of the authors of the notice clear that they are terminating the tenancy only with effect from the end of the month of October 1962 and not with effect from any earlier point of time during the curre ncy of that month. If the respondents do not vacate the premises within the mont h of October 1962, they would be treated as trespassers from November 1, 1962 an d not from any earlier date, clearly implying that they would lawfully continue as tenants up to the expiration of the month of October 1962. The tenancy was, t herefore, sought to be determined on the expiration of the month of October 1962 and not earlier and the notice to quit expired with the end of the month of ten ancy as required by Section 106 of the Transfer of Property Act. It was in the c ircumstances a valid notice, which effectively determined the tenancy of the res pondents with effect from the midnight of October 31, 1962.

16. This Court in Raja Ram Soni Vs. Krishna Prasad reported in AIR 1973 GAUH ATI 17 had discussed as to how the notice to quite is to be construed and held t hat notice should not be interpreted in a way to find fault with but only in a w ay to ascertain whether the defendant understood it. Para No.6 of the judgment i n Raja Ram Soni(Supra) reads as follows:-

6. The purpose of a notice under Section 106 of the Transfer of Property Act is to terminate a tenancy by six months' notice expiring with the end of a year of tenancy if the purpose of the tenancy was agricultural or manufacturing, or by 1 5 days' notice expiring with the end of the month of the tenancy, if the tenancy was from month to month and for any purpose other than agricultural or manufact uring. The notice should not be interpreted in a way to find fault with it, but only in a way to ascertain whether the defendant understood it. The Privy Counci l in the case of Harihar Banerjee Vs. Ramshashi Roy, AIR 1918 PV 102 has held:-

The principles governing the construction of a notice to quit laid down by Engl ish cases are equally applicable to cases arising in India and they establish th at notices to quit, though not strictly accurate or consistent in the statements embodied in them, may still be good and effective in law; the test of their suf ficiency is not what they would mean to a stranger ignorant of all the facts and circumstances touching the holding to which they purport to refer, but what the y would mean to tenants presumably conversant with all those facts and circumsta nces, and further they are to be construed not with a desire to find fault in th em which would render them defective but to be construed ut res magis valent qua m per eat.

17. The Apex Court in Parwati Bai Vs. Radhika reported in (2003) 12 SCC 551 held that the defendant has to raise the specific objection as to the validity o f the notice in the written statement. In absence of such specific objection and at the earliest, it will be deemed to have been waived even if there exists one . In the instant case as stated above, the appellant-defendant did not raise any specific objection as to the validity of the notice dated 13.9.2000 in the writ ten statement except the very vague pleading that the said notice dated 13.9.200 0 is not valid. Para 6 of the SCC in Parwati Bai(Supra) reads as follows:-

6. The singular question to be examined in the present case is whether the tenan cy was terminated in accordance with the provisions of Section 106 of the Transf er of Property Act. The receipt of notice by the defendant is admitted in the wr

itten statement. The defendant has not raised any specific objection as to the v alidity of the notice. An objection as to invalidity or infirmity of notice unde r Section 106 of the TP Act should be raised specifically and at the earliest; e lse it will be deemed to have been waived even if there exists one. It cannot, t herefore, be said that the notice in the present case suffered from any infirmit y. A copy of the notice was exhibited and proved by the plaintiff as Ext.P-4.

18. The Apex Court is again of the similar view in Dharam Pal Vs. Harbans Si ngh reported in (2006) 9 SCC 216. Para 8 of the SCC reads as follows:-

8. Obviously for want of specific plea in the written statement, the trial court has not framed any issue reflecting an objection to the validity or sufficiency of notice, the plea in the manner in which it is sought to be urged before us. The plea as to insufficiency of notice should be deemed to have been waived by t he appellant and cannot be allowed to be urged at this stage. No fault can be fo und with the judgment and decree of the High Court as also of the two courts bel ow upholding the termination of tenancy and the plaintiff-respondents entitlemen t to evict the tenant.

19. To the contra Mr. B.C. Das, learned senior counsel appearing for the app ellant by heavily relying on the decision of the Allahabad High Court in Farooq Ahmed Vs. Muneshwar Bux Singh reported in AIR 1972 ALLAHABAD 155 and also in Ahm ad Ali Vs. Mohd Jamal Uddin reported in AIR 1963 ALLAHABAD 581, submits that the said notice dated 13.9.2000 is not a valid notice to quit under Section 106 of the TP Act inasmuch as it is only a notice for vacation of the premises and not for terminating the tenancy.

20. Keeping in view of the decision of the Apex Court discussed above as wel l as the decision of this Court in Raja Ram Soni(Supra), I with due respect to t he Allahabad High Court cannot endorse the view of the Allahabad High Court in t he said two cases.

21. For the reasons discussed above, this Court answered the second substant ial question of law formulated in the present second appeal against the appellan t-defendant and that the said notice dated 13.9.2000 is valid under Section 106 of TP Act. Accordingly, the present appeal is devoid of merit. Hence the same is dismissed. Parties are to bear their own cost.